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**From:**

**Sent:** Wednesday, May 20, 2009 10:55:30 AM

**To:**

**Cc:**

**Subject:** RE: The 4975 case

Section 4975(c)(1)(A) prohibits any direct or indirect sale or exchange or leasing, or any property between a plan and a disqualified person. Section 4975(c)(1)(D) defines, in part, a "prohibited transaction" as any direct or indirect transfer of plan income or assets to a "disqualified person" or the use of plan income or assets by or for any "disqualified person." Section 4975(c)(1)(E) further defines a "prohibited transaction" as any act whereby a "disqualified person" who is a fiduciary deals with the income or assets of a plan for his own interest or for his own account. Under section 4975(a) and (b), a disqualified person is liable for the excise tax if he or she participates in the transaction. Participation in section 4975 occurs any time a disqualified person is involved in a transaction in a capacity OTHER THAN as a fiduciary acting only as such. See sec. 4975(a); see also sec. 53.4941(a)- 1(a)(3), Excise Tax Regs. Further, a fiduciary who violated section 406(a), ERISA is liable only if he or she possessed or should have possessed the requisite knowledge. In contrast, those that participate in a section 4975 prohibited transaction are liable for the excise tax notwithstanding the fact that they may have acted innocently or in good faith or otherwise did not know or understand the nature of the transaction. O.Malley v. Commissioner, 96 T.C. 644 (1991); Rutland v. Commissioner, 89 T.C. 1137 (1987); Lieb v. Commissioner, 88 T.C. 1474 (1987). Thus, a violation of section 4975(c) of the Code would arise only if there were a transaction between the Plan and the disqualified person or the transaction benefited a disqualified person or a person in who the disqualified person had an interest. Based on the facts that you have given so far I am having difficulty seeing that there is a prohibited transaction.

These are the questions that I think we should have in order to make a proper determination as to whether there is a PT:

[REDACTED]

[REDACTED]

[REDACTED]